



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3287

by Rep. Mary E. Flowers

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/11-13.4 new  
755 ILCS 5/25-1

from Ch. 110 1/2, par. 25-1

Amends the Probate Act of 1975. Provides that the terms of a guardianship account established on behalf of a minor at a financial institution must provide for compliance with court orders regarding the establishment and management of the account, and imposes certain other duties upon financial institutions. Provides that an entity may not act under the direction of a small estate affidavit unless the affiant, or his or her agent, has first presented the affidavit before a judge and obtained a court order granting access. Provides that if there is a surviving spouse, but the surviving spouse is not the affiant, the affiant must state the reason that the affiant, rather than the surviving spouse, has prepared the small estate affidavit. Provides that an affidavit not prepared by a surviving spouse must include a notarized statement, signed by the surviving spouse and witnessed by 2 persons unrelated to the affiant, stating that the surviving spouse declines to prepare the affidavit. Provides that if the reason for the surviving spouse's inability to prepare the affidavit is medically related, a letter from the surviving spouse's physician should be attached attesting to the medical condition that makes the surviving spouse unable to complete the affidavit. Provides that if there is no surviving spouse and there is one or more minor child, the affiant must be a court-appointed guardian for one or more of the children. Provides that if the surviving spouse is the affiant, he or she shall affirm that he or she was not separated from the decedent. Makes other changes.

LRB099 07473 HEP 31305 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing  
5 Section 25-1 and adding Section 11-13.4 as follows:

6 (755 ILCS 5/11-13.4 new)

7 Sec. 11-13.4. Financial institution; guardianship accounts  
8 established on behalf of minors.

9 (a) If an account at a financial institution is a  
10 guardianship account established on behalf of a minor, the  
11 terms of the account must provide for compliance with orders of  
12 the court, if any, regarding the establishment and management  
13 of that account. A financial institution has a duty to inquire  
14 as to the existence of any court orders when opening a  
15 guardianship account on behalf of a minor. If the financial  
16 institution holds an account that is subject to a court order,  
17 the financial institution must obtain a court order granting  
18 the authority to release funds from the account. An order  
19 authorizing the disbursement of funds in the account may be  
20 granted only upon a showing of good cause.

21 (b) A guardian of a minor that establishes an account with  
22 a financial institution on behalf of the minor pursuant to a  
23 court order has a duty to present the court order to the

1 financial institution at the time the account is opened.

2 (c) As used in this Section, "financial institution"  
3 includes, but is not limited to, a bank, credit union,  
4 investment company, savings bank, savings and loan  
5 association, securities dealer, and trust company.

6 (755 ILCS 5/25-1) (from Ch. 110 1/2, par. 25-1)

7 Sec. 25-1. Payment or delivery of small estate of decedent  
8 upon affidavit.

9 (a) When any person, corporation, or financial institution  
10 (1) indebted to or holding personal estate of a decedent, (2)  
11 controlling the right of access to decedent's safe deposit box  
12 or (3) acting as registrar or transfer agent of any evidence of  
13 interest, indebtedness, property or right is furnished with a  
14 small estate affidavit in substantially the form hereinafter  
15 set forth, that person, corporation, or financial institution,  
16 upon examining and approving the documents presented by the  
17 affiant which are attached to the small estate affidavit, shall  
18 pay the indebtedness, grant access to the safe deposit box,  
19 deliver the personal estate or transfer or issue the evidence  
20 of interest, indebtedness, property or right to persons and in  
21 the manner specified in the affidavit or to an agent appointed  
22 as hereinafter set forth.

23 (a-5) A person, corporation, or financial institution may  
24 not pay the indebtedness, grant access to the safe deposit box,  
25 deliver the personal estate, or transfer or issue the evidence

1 of interest, indebtedness, property or right as provided in  
 2 subsection (a) of this Section, unless the affiant, or his or  
 3 her agent, has first obtained a court order as provided in this  
 4 subsection (a-5). A judge shall grant an order under this  
 5 subsection (a-5) if the affiant presents: (i) the small estate  
 6 affidavit; (ii) evidence of notice having been given to the  
 7 heirs or legatees identified in paragraph 10 of the affidavit;  
 8 and (iii) a petition asking the court to find that the  
 9 affidavit does not appear to have been fraudulently executed  
 10 and to grant access to property in the manner specified in  
 11 paragraph 11 of the affidavit. A person, corporation, or  
 12 financial institution has a duty to inquire as to the existence  
 13 of any court orders before taking action under this Section.

14 (b) Small Estate Affidavit

15 I, (name of affiant) , on oath state:

16 1. (a) My post office address is: ;

17 (b) My residence address is: ; and

18 (c) I understand that, if I am an out-of-state  
 19 resident, I submit myself to the jurisdiction of Illinois  
 20 courts for all matters related to the preparation and use of  
 21 this affidavit. My agent for service of process in Illinois is:

22 NAME.....

23 ADDRESS.....

24 CITY.....

25 TELEPHONE (IF ANY).....

26 I understand that if no person is named above as my agent for

1 service or, if for any reason, service on the named person  
2 cannot be effectuated, the clerk of the circuit court of  
3 .....(County) (Judicial Circuit) Illinois is recognized by  
4 Illinois law as my agent for service of process.

5 2. The decedent's name is ;

6 3. The date of the decedent's death was , and I  
7 have attached a copy of the death certificate hereto.

8 4. The decedent's place of residence immediately before his  
9 death was ;

10 5. No letters of office are now outstanding on the  
11 decedent's estate and no petition for letters is contemplated  
12 or pending in Illinois or in any other jurisdiction, to my  
13 knowledge;

14 6. The gross value of the decedent's entire personal  
15 estate, including the value of all property passing to any  
16 party either by intestacy or under a will, does not exceed  
17 \$100,000. (Here, list each asset, e.g., cash, stock, and its  
18 fair market value.);

19 7. (a) All of the decedent's burial and funeral expenses  
20 and other debts have been paid, or

21 (b) All of the decedent's known unpaid debts are listed and  
22 classified as follows (include the name, post office address,  
23 and amount):

24 Class 1: funeral and burial expenses, which include  
25 reasonable amounts paid for a burial space, crypt, or  
26 niche; a marker on the burial space; and care of the burial

1 space, crypt, or niche; expenses of administration; and  
2 statutory custodial claims as follows:

3 .....

4 Class 2: the surviving spouse's award or child's award, if  
5 applicable, as follows:

6 .....

7 Class 3: debts due the United States, as follows:

8 .....

9 Class 4: money due employees of the decedent of not more  
10 than \$800 for each claimant for services rendered within 4  
11 months prior to the decedent's death and expenses attending  
12 the last illness, as follows:

13 .....

14 Class 5: money and property received or held in trust by  
15 the decedent which cannot be identified or traced, as  
16 follows:

17 .....

18 Class 6: debts due the State of Illinois and any county,  
19 township, city, town, village, or school district located  
20 within Illinois, as follows:

21 .....

22 Class 7: all other claims, including medical and credit  
23 card bills, as follows:

24 .....

25 (Strike either 7(a) or 7(b)).

26 7.5. I understand that all valid claims against the

1 decedent's estate described in paragraph 7 must be paid by me  
 2 from the decedent's estate before any distribution is made to  
 3 any heir or legatee. I further understand that the decedent's  
 4 estate should pay all claims in the order set forth above, and  
 5 if the decedent's estate is insufficient to pay the claims in  
 6 any one class, the claims in that class shall be paid pro rata.

7 8. There is no known unpaid claimant or contested claim  
 8 against the decedent, except as stated in paragraph 7.

9 9. (a) The names and places of residence of any surviving  
 10 spouse, minor children and adult dependent\* children of the  
 11 decedent are as follows:

12	Name and	Place of	Age of
13	Relationship	Residence	minor child

14 \*(Note: An adult dependent child is one who is unable to  
 15 maintain himself and is likely to become a public charge.)

16 (b) The award allowable to the surviving spouse of a  
 17 decedent who was an Illinois resident is \$..... (\$20,000,  
 18 plus \$10,000 multiplied by the number of minor children and  
 19 adult dependent children who resided with the surviving spouse  
 20 at the time of the decedent's death. If any such child did not  
 21 reside with the surviving spouse at the time of the decedent's  
 22 death, so indicate).

23 (c) If there is no surviving spouse, the award allowable to  
 24 the minor children and adult dependent children of a decedent  
 25 who was an Illinois resident is \$..... (\$20,000, plus

1 \$10,000 multiplied by the number of minor children and adult  
 2 dependent children), to be divided among them in equal shares.  
 3 If there is no surviving spouse and there are minor children,  
 4 the affiant must be a court appointed guardian for one or more  
 5 of the children. If this provision applies, the date of the  
 6 court order making this appointment was ....., and I have  
 7 attached a copy of the court order.

8 10. (a) The decedent left no will. The names, places of  
 9 residence and relationships of the decedent's heirs, and the  
 10 portion of the estate to which each heir is entitled under the  
 11 law, after all just debts and expenses described in paragraph 7  
 12 are fully paid, where decedent died intestate are as follows:

13	Name, relationship	Age of	Portion of
14	and place of residence	minor	Estate
15		OR	

16 (b) The decedent left a will, which has been filed with the  
 17 clerk of an appropriate court. A certified copy of the will on  
 18 file is attached. To the best of my knowledge and belief the  
 19 will on file is the decedent's last will and was signed by the  
 20 decedent and the attesting witnesses as required by law and  
 21 would be admissible to probate. The names and places of  
 22 residence of the legatees and the portion of the estate, if  
 23 any, to which each legatee is entitled are as follows:

24	Name, relationship	Age of	Portion of
25	and place of residence	minor	Estate

1 (Strike either 10(a) or 10(b)).

2 (c) Affiant is unaware of any dispute or potential conflict  
3 as to the heirship or will of the decedent.

4 10.1. I, .....(the affiant) state that I am the  
5 surviving spouse and the decedent and I resided together as  
6 husband and wife and we were not legally separated, or  
7 otherwise separated, at the time of decedent's death.

8 10.2. I, ..... (the affiant) state that my  
9 relationship to the decedent is ..... and (check  
10 all that apply):

11 ... there is no surviving spouse; or

12 ... there is a surviving spouse, but the surviving spouse is:

13 ... unable to prepare the small estate affidavit for  
14 medical reasons as shown by the attached letter of a physician  
15 for the surviving spouse, based upon the physician's  
16 examination of the surviving spouse within 90 days prior to the  
17 date of the affidavit, attesting to and describing this  
18 disabling medical condition; or

19 ... has declined, refused, or asked affiant to prepare the  
20 small estate affidavit. The reason that the affiant has  
21 prepared this small estate affidavit rather than the surviving  
22 spouse is that (state here the precise time, date, and  
23 circumstances of the surviving spouse declining, refusing, or  
24 asking affiant to prepare the small estate affidavit):

25 .....

26 Attached is a statement of the surviving spouse in which

1 the surviving spouse expressly declines or states that he or  
 2 she refuses to prepare the small estate affidavit or expressly  
 3 requests that the affiant prepare the small estate affidavit.  
 4 This statement must be signed by the surviving spouse,  
 5 witnessed by 2 persons unrelated to the affiant, and be  
 6 notarized.

7 ~~10.3. My relationship to the decedent or the decedent's~~  
 8 ~~estate is as follows: .....~~

9 10.5. (The following paragraph should appear in bold type  
 10 and in not less than 14-point font):

11 I understand that the decedent's estate must be  
 12 distributed first to satisfy claims against the decedent's  
 13 estate as set forth in paragraph 7.5 of this affidavit  
 14 before any distribution is made to any heir or legatee. By  
 15 signing this affidavit, I agree to indemnify and hold  
 16 harmless all creditors of the decedent's estate, the  
 17 decedent's heirs and legatees, and other persons,  
 18 corporations, or financial institutions relying upon this  
 19 affidavit who incur any loss because of reliance on this  
 20 affidavit, up to the amount lost because of any act or  
 21 omission by me. I further understand that any person,  
 22 corporation, or financial institution recovering under  
 23 this indemnification provision shall be entitled to  
 24 reasonable attorney's fees and the expenses of recovery.

25 11. After payment by me from the decedent's estate of all  
 26 debts and expenses listed in paragraph 7, any remaining

1 property described in paragraph 6 of this affidavit should be  
2 distributed as follows:

3	Name	Specific sum or property to be distributed
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4 The foregoing statement is made under the penalties of  
5 perjury\*.

6 .....

7 Signature of Affiant

8 Signed and sworn before me on (insert date).

9 .....

10 Notary Public

11 \*(Note: A fraudulent statement made under the penalties of  
12 perjury is perjury, as defined in Section 32-2 of the Criminal  
13 Code of 2012.)

14 (c) Appointment of Agent. If safe deposit access is  
15 involved or if sale of any personal property is desirable to  
16 facilitate distribution pursuant to the small estate  
17 affidavit, the affiant under the small estate affidavit may in  
18 writing appoint one or more persons as the affiant's agent for  
19 that purpose, provided that the writing contains the signature  
20 of each person, is witnessed by 2 persons unrelated to the  
21 affiant and is notarized, and also shows the written consent of  
22 the surviving spouse and all adult children. The agent shall

1 have power, with ~~without~~ court approval, to gain access to,  
2 sell, and distribute the property in the manner specified in  
3 paragraphs 7.5 and 11 of the affidavit; and the payment,  
4 delivery, transfer, access or issuance shall be made or granted  
5 to or on the order of the agent. The affiant may appoint  
6 himself or herself as the designated representative to exercise  
7 the powers and perform the duties of an agent described in this  
8 subsection (c).

9 (d) Reliance and Release. Any person, corporation, or  
10 financial institution who, upon examination and approval of all  
11 documents presented by the affiant with this small estate  
12 affidavit, acts in good faith reliance on a copy of a document  
13 purporting to be a small estate affidavit that is substantially  
14 in compliance with subsection (b) of this Section shall be  
15 fully protected and released upon payment, delivery, transfer,  
16 access or issuance pursuant to such a document to the same  
17 extent as if the payment, delivery, transfer, access or  
18 issuance had been made or granted to the representative of the  
19 estate. Such person, corporation, or financial institution is  
20 not required to see to the application or disposition of the  
21 property; but each person to whom a payment, delivery,  
22 transfer, access or issuance is made or given is answerable  
23 therefor to any person having a prior right and is accountable  
24 to any representative of the estate.

25 (e) Distributions pursuant to an affidavit substantially  
26 in the form set forth in subsection (b) of this Section may be

1 made to the affiant, if so specified in paragraph 11,  
2 notwithstanding the disclosure of known unpaid debts. The  
3 affiant, acting on behalf of the decedent's estate, is  
4 obligated to pay all valid claims against the decedent's estate  
5 before any distribution is made to any heir or legatee. The  
6 affiant signing the small estate affidavit prepared pursuant to  
7 subsection (b) of this Section shall indemnify and hold  
8 harmless all creditors, heirs, and legatees of the decedent and  
9 other persons, corporations, or financial institutions relying  
10 upon the affidavit who incur loss because of such reliance.  
11 That indemnification shall only be up to the amount lost  
12 because of the act or omission of the affiant. Any person,  
13 corporation, or financial institution recovering under this  
14 subsection (e) shall be entitled to reasonable attorney's fees  
15 and the expenses of recovery.

16 (f) The affiant of a small estate affidavit who is a  
17 non-resident of Illinois submits himself or herself to the  
18 jurisdiction of Illinois courts for all matters related to the  
19 preparation or use of the affidavit. The affidavit shall  
20 provide the name, address, and phone number of a person whom  
21 the affiant names as his agent for service of process. If no  
22 such person is named or if, for any reason, service on the  
23 named person cannot be effectuated, the clerk of the circuit  
24 court of the county or judicial circuit of which the decedent  
25 was a resident at the time of his death shall be the agent for  
26 service of process.

1           (g) Any action properly taken under this Section, as  
2 amended by Public Act 93-877, on or after August 6, 2004 (the  
3 effective date of Public Act 93-877) is valid regardless of the  
4 date of death of the decedent.

5           (h) The changes made by this amendatory Act of the 96th  
6 General Assembly apply to a decedent whose date of death is on  
7 or after the effective date of this amendatory Act of the 96th  
8 General Assembly.

9           (i) The changes made by this amendatory Act of the 98th  
10 General Assembly apply to a decedent whose date of death is on  
11 or after the effective date of this amendatory Act of the 98th  
12 General Assembly.

13           (Source: P.A. 97-1150, eff. 1-25-13; 98-836, eff. 1-1-15.)